



HOLLEY NETHERCOTE
commercial lawyers

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Our ref:JB: 70213

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT

BY EXPRESS POST

Dear Sir/Madam,

Re: Notification for third line forcing for Hungry Jack's Australia Pty Ltd

We act for Hungry Jack's Australia Pty Ltd

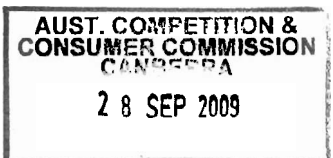
Please find enclosed:

1. completed Form G – notification in respect of exclusive dealing; and
2. cheque in the amount \$100.

Please contact me with any queries in relation to this matter

Yours sincerely,

James Berman
HOLLEY NETHERCOTE
Enc: 2



Form G

Commonwealth of Australia
Trade Practices Act 1974 — *subsection* 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act* 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

N94192 Hungry Jack's Australia Pty Ltd ABN 83 065 643 343 (HJA).

(b) Short description of business carried on by that person:

HJA is the master franchisee in Australia of the network of Hungry Jack's franchisees which operate quick service hamburger restaurants using the business systems, formats, methods, procedures, standards, designs and image developed and owned by Burger King Corporation (a Florida Corporation) (BKC) (Burger King System) under the Hungry Jack's trade marks (Hungry Jack's Marks) (Hungry Jack's Restaurant).

(c) Address in Australia for service of documents on that person:

c/-James Berman, Lawyer, Holley Nethercote, Level 1, 224 Queen Street Melbourne VIC 3000.

2. Notified arrangement

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The notification relates to the acquisition by franchisees of

- i. accounting services from Lawler Partners; and
- ii. all the equipment necessary to operate a Hungry Jack's franchise including but not limited to kitchen utensils, plant and equipment and furniture and fittings ("the Franchisee Equipment").

(b) Description of the conduct or proposed conduct:

HJA requires its franchisees to purchase certain goods (as detailed above in section 2(a)) from suppliers approved by HJA ("Approved Suppliers"). HJA requires that franchisees retain the accounting services of Lawler Partners ("the Approved Accountants"). HJA has Approved Suppliers in all states and territories in which HJA operates to ensure that franchisees

have a supplier in close proximity to their business.

By appointing Approved Suppliers and facilitating the acquisition of the franchisee equipment, HJA seeks to ensure:

- i. consistency in the product type offered to all Hungry Jack's franchises and by all Hungry Jack's franchisees to the consumer;
- ii. consistency in the high quality product offered to all Hungry Jack's franchises and by all Hungry Jack's franchisees to consumers as a result of strict quality checks and quality control measures of Approved Suppliers;
- iii. confidence in compliance with food safety, food handling and other health regulations as a result of the consistency;
- iv. that the equipment is of a kind that will perform as required in terms of producing the necessary volume whilst maintaining the necessary standards;
- v. that the equipment is sufficiently durable;
- vi. consistency in the delivery of products and competitive pricing of products; and
- vii. consistency in the services provided to customers of Hungry Jack's restaurants.

By appointing the Approved Accountants HJA seeks to ensure:

- i. consistency in the formatting and preparation of financial reports prepared for the franchisees;
- ii. that HJA receives timely financial reporting in relation to each franchisee. This allows HJA to respond to any financial difficulties a franchisee may be experiencing in a timely manner;
- iii. economies of scale and a reduction in costs to the franchisee to be passed on to consumers;
- iv. to ensure confidentiality of all HJA's and the franchisees' financial information to as great an extent as possible;
- v. increased business efficiency for HJA and for each of the franchisees

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

(a) Class or classes of persons to which the conduct relates:

- i. Hungry Jack's franchisees
- ii. Approved Suppliers
- iii. The Approved Accountants

(b) Number of those persons:

(i) At present time:

(A) Hungry Jack's franchisees: 42

(B) Approved Suppliers: 73

(ii) Estimated within the next year:

(A) Hungry Jack's franchisees: 42

(B) Approved Suppliers: 75

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

(A) Hungry Jack's franchisees: Please refer to Annexure B.

(B) Approved Suppliers: The Approved Suppliers supply a large range of goods and equipment to franchisees. Such goods and equipment includes handled food pans, colour coded kitchen utensils, rubbish bins with advertising graphics, computerised deep fryers, industrial microwaves, touch screen cash registers, mobile freezers, mobile refrigerators and computer software. Given the large number of Approved Suppliers (in excess of 50) a register of suppliers is maintained at Hungry Jack's premises at 1183 Toorak Rd, Camberwell, Victoria which can be provided on request.

4. Public benefit claims

(a) Arguments in support of notification:

(i) Franchisees and consumers

The proposed conduct is likely to have the benefits listed below for HJA franchisees and consumers:

(A) Franchisees will have guaranteed access to HJA Approved Products at a competitive price due to the established supply relationship and the increased purchasing power of the franchising network. This will allow franchisees to offer favourable prices to the consumer and establish a competitive advantage.

(B) The proposed conduct is likely to foster business efficiency as franchisees are assured of access to the Approved Products of a consistent standard, which gives them more time to focus on operating their business.

(C) Business efficiency is further enhanced by HJA requiring franchisees to use the nominated and Approved Suppliers. It would be extremely inefficient if each franchisee had to assess the ability of each of its suppliers to meet HJA specifications. Accordingly, HJA draws on considerable knowledge and experience in the retail fast food industry to identify those suppliers that can and will supply goods of a particular standard as required.

(D) The proposed conduct provides for increased quality of the products being offered under the Hungry Jack's brand name

as the Approved Suppliers undergo rigorous quality checks, stock and supply control standards and continuous quality control measures.

- (E) The proposed conduct will ensure consistency, uniformity and end-to-end quality control, as is paramount to the integrity of the brand.
- (F) In the general retail fast food market, inter-brand competition is paramount. By requiring franchisees to acquire products from specified suppliers, HJA is able to ensure that all franchisees maintain high standards. This ensures the integrity of the Hungry Jacks brand and allows the brand to compete more effectively in the retail food market.
- (G) The proposed conduct not only seeks to ensure quality of the final product produced in a Hungry Jack's store but also seeks to ensure the quality of the business itself, by ensuring that franchisees are provided with reputable providers for professional accounting services. In addition, the proposed conduct seeks to ensure that all Hungry Jack's stores are fitted out with the same equipment. This not only seeks to present customers with a positive and consistent view of the Hungry Jack's brand but ensures consistency in the quality and appeal of the food prepared for customers.

(ii) Supplier

The proposed conduct provides the Approved Supplier with certainty of supply and quantities of supply to franchisees which may result in:

- A. cost savings in the management of the supplier's business; and
- B. increased business efficiency.

- (b) Facts and evidence relied upon in support of these claims:
Nil.

5. Market definition

The markets can be reasonably identified as:

- i. the broad wholesale market for the sale of kitchen utensils in Australia;
- ii. the broad wholesale market for the sale of food pans in Australia;
- iii. the broad wholesale market for the sale of ovens in Australia;
- iv. the broad wholesale market for the sale of bins in Australia;
- v. the broad wholesale market for the sale of microwaves in Australia;
- vi. the broad wholesale market for the sale of freezers in Australia;

- vii. the broad wholesale market for the sale of refrigerators in Australia;
- viii. the broad wholesale market for the sale of computers in Australia;
- ix. the broad wholesale market for the sale of fire extinguishers in Australia;
- x. the broad wholesale market for the sale of touch screen cash registers in Australia;
- xi. the broad retail market for the sale of takeaway fast food and fast food restaurants in Australia;
- xii. the broad retail market for the sale of beverages in Australia; and
- xiii. the broad market for the provision of accounting services.

Each of the above markets is characterised by a large number of participants at the relevant wholesale and retail levels.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2(a) above and the prices of goods or services in other affected markets:

- (i) Franchisees

The proposed conduct may prevent franchisees from selecting between suppliers and accountants on the normal commercial basis of product or service quality and price and whether or not to purchase another product or retain another service, from a supplier or accountant which is not HJA approved. However, as specified in Annexure A, HJA will not unreasonably refuse a franchisee's request to use a product or service from another supplier or accountant if the product or service conforms to HJA specifications. In addition, as described in Annexure A, franchisees may purchase products or services from suppliers that are not Approved Suppliers, provided that the franchisee receives written approval from HJA to use such a supplier.

On this basis, the detriment to franchisees will be minimal.

- (ii) Consumers

The anti-competitive effect on the end consumer is negligible, as it will not ultimately prohibit consumers from comparing prices and products for the following reasons:

- (A) retailers which offer burgers and associated food products in the relevant retail markets are numerous in Australia which allows consumers to "shop around" easily; and
 - (B) there is arguably no barrier to entry at retail level because of the volume of retailers in Australia, which offer similar products in the relevant retail markets

(eg fast food restaurants for the sale of burgers).

(iii) Supplier

The wholesale suppliers of Approved Products that are not approved by HJA will not have access to HJA franchisees, unless they are nominated by a particular franchisee to provide non-approved products and meet the specification outlined by HJA for Nominated Suppliers.

However, the anti-competitive effect on suppliers who do not have access to HJA franchisees will be insignificant given the number of retailers in Australia to which suppliers may sell their products.

(b) Facts and evidence relevant to these detriments:


Nil.

7. Further information

(a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

c/- James Berman, Lawyer, Holley Nethercote, Level 1, 224 Queen Street Melbourne VIC 3000.

Dated 25/9/09


(signature)

Signed on behalf of the applicant

James Berman
(Full name)

ANNEXUE A

SUBMISSION BY HUNGRY JACK'S AUSTRALIA PTY LTD IN SUPPORT OF NOTIFICATION UNDER SETION 93(1) OF THE TRADE PRACTICES ACT 1974

Introduction

The purpose of this submission is to assist the Australian Competition and Consumer Commission in its consideration of the facts set out in the Exclusive Dealing Notification given by Hungry Jack's Australia Pty Ltd ABN 83 065 643 343 (HJA).

Franchise Agreement

The arrangement described in this Notification is given effect through the terms of the franchise agreement with each HJA franchisee.

Clause 5.4 of the HJA franchise agreement requires franchisees to purchase all equipment necessary to operate a Hungry Jack's franchise from Hungry Jack's prior to the opening date of the franchise restaurant.

Clause 5.6(e) requires the franchisee to retain the accounting services of Lawler & Partners from the opening date of the franchise restaurant.

Clause 5.8 of the franchise agreement requires the franchisee to obtain all Approved Products only from suppliers that have been approved by HJA, unless HJA first gives its written approval to the franchisee to obtain a product, ingredient or accounting services from an alternative supplier. HJA will evaluate all proposed suppliers and/or distributors against HJA's then current criteria and will inform the franchisee whether or not the proposed supplier and/or distributor can be approved as an Approved Supplier and Distributor

ANNEXURE B

Hungry Jack's Franchisees

Victoria

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Chamdale Pty Ltd ABN 11 061 008 124 (t/as Hungry Jack's (Bendigo))	Cnr Thistle & High Streets Bendigo VIC 3550	03 5441 3666	1994
HJ Operations Pty Ltd ABN 16 117 220 532 (t/as Hungry Jack's (Shepparton))	471-473 Wyndham Street Shepparton VIC 3630	03 5831 1511	2006
Agere Group Pty Ltd ACN 063 622 417 (t/as Hungry Jack's (Chadstone))	Shop 234 Upper Food Court, Chadstone Shopping Centre 1341 Dandenong Road Chadstone VIC 3148	03 9530 9745	2003
D&T Fklaras & Sons Pty Ltd ABN 55 094 102 940 (t/as Hungry Jack's (Traralgon))	120 Argyle Street Traralgon VIC 3844	03 5176 0713	2002
Own Investments Pty Ltd ABN 93 477 132 601 (t/as Hungry Jack's (Tullamarine))	239 Mickleham Road Tullamarine VIC 3043	03 9338 4333	2000/2007
Timic Pty Ltd ABN 40 080 543 915 (t/as Hungry Jack's (Kangaroo Flat))	Lansell Plaza Shopping Centre Calder Highway Kangaroo Flat VIC 3555	03 5447 3777	2002
OSHJ Pty Ltd ACN 126 262 986 (t/as Hungry Jack's (Mentone)) (t/as Hungry Jack's Sth Frankston)	161 Nepean Highway Mentone Vic 3194 Cnr Frankston/Moorooduc Hwy, South Frankston Vic 3199	03 9584 3531 03 5971 5211	2007 2007
A.C.N. 125 365 175 Pty Ltd ACN 125 365 175 (t/as Hungry Jack's (Heatherton))	Parkview Estate Corner Corporate Drive and Warrigal Road Moorabbin Vic 3189	03 9558 2209	2006/2007
Ryson Enterprises Pty Ltd ACN 095 665 535 (t/as Hungry Jack's (Corio))	Cnr School Road & Princes Highway Corio Vic 3214	03 5275 4311	2002

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Red 78 Pty Ltd ABN 60 092 452 689 (t/as Hungry Jack's (Mildura))	807/15 th Street Mildura Vic 3500	03 5021 1405	2001
Sovereign Restaurants Pty Ltd ABN 39 088 407 (t/as Hungry Jack's (Roxburgh Park))	Cnr Somerton Road & Reservoir Drive Roxburgh Park Vic 3064	03 9303 9199	2001
(t/as Hungry Jack's (Sunbury))	25 Gap Road, Sunbury Vic 3429	03 9740 9299	2007
Delaware North Retail Services Pty Ltd ABN 99 001 341 073 (t/as Hungry Jack's (Southern Cross Station))	Southern Cross Station Spencer Street Melbourne Vic 3000	03 9619 1549	2006
(t/as Hungry Jack's (Melbourne International Airport))	Food Court Melbourne Airport International Terminal Melbourne Airport Vic 3045	03 8836 7215	1992/2007
(t/as Hungry Jack's (Melbourne Domestic Airport))	Qantas Terminal Melbourne Airport Vic 3045	03 9335 2877	1992/2007
Ozinda International Pty Ltd (as trustee for The HJ Rowville Unit Trust) ABN 14 122 763 428 (t/as Hungry Jack's (Rowville))	1175 Stud Road Rowville Vic 3178	03 9755 8288	2007
Dean Associates Pty Ltd ABN 14 122 763 428 (t/as Hungry Jack's (Knox City))	Shop 2033, Knox City Shopping Centre Burwood Highway Wantirna South Vic 3152	03 9837 5091	2007
HJPK Pty Ltd (as trustee for the HJ Pakenham Trust) ACN 120 68 7916 (t/as Hungry Jack's (Pakenham))	78 Princes Highway Pakenham Vic 3810	03 5941 4030	2001/2007
HJER Pty Ltd (as trustee for the HJ Berwick Trust) ACN 120 693 101 (t/as Hungry Jack's Berwick))	Corner Clyde & Greaves Road Berwick Vic 3806	03 9702 2466	2007
HJFG Pty Ltd (as trustee for the HJ Fountain Gate Trust) ACN 120 688 495 (t/as Hungry Jack's Fountain Gate))	Westfield Shopping Centre Corner Overland Drive & Narre Warren North Road Narre Warren Vic 3805	03 9796 0188	2007

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
HJHA Pty Ltd (as trustee for the HJ Hallam Trust) ACN 120 689 901 (t/as Hungry Jack's (Hallam))	1-9 Belgrave/Hallam Road Hallam VIC 3803	03 9796 3488	2007
A.C.N. 125 365 228 Pty Ltd ACN 125 365 228 (t/as Hungry Jack's (Southland))	Shop FC 313 Westfield Shoppingtown Southland 1239 Nepean Highway Cheltenham Vic 3192	03 9583 6747	2004/2007

New South Wales

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Delaware North Retail Services Pty Ltd ABN 99 001 341 073 (t/as Hungry Jack's (Sydney Central Train Station))	Country Link Concourse SCTS Pitt Street Haymarket NSW 2000	02 9211 5100	1999
(t/as Hungry Jack's (Sydney Airport))	Shop 8 Qantas Domestic Terminal Airport Mascot NSW 2020	02 9700 7690	2004
Pyramid Foods Pty Ltd ABN 46 068 458 391 ABN 19 003 746 969 (t/as Hungry Jack's (Bass Hill))	739 Hume Highway Bass Hill NSW 2197	02 9724 1109	1998
(t/as Hungry Jack's (Seven Hills))	40 Abbott Road Seven Hills NSW 2147	02 9838 0841	1997
(t/as Hungry Jack's (Auburn))	289 Parramatta Road Auburn NSW 2144	02 9648 6540	2000
(t/as Hungry Jack's (Parklea))	Shop 1 1190 Old Windsor Road Parklea NSW 2768	02 8824 4177	2002
Simand Enterprises Pty Ltd ABN 82 099 391 643 (t/as Hungry Jack's (Hurstville))	266-268 Forest Road Hurstville NSW 2220	02 9570 9661	2004

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Orecan Holdings Pty Ltd ACN 107 940 214 (t/as Hungry Jack's (Bankstown))	Shop 27 173-185 Canterbury Road Bankstown NSW 2200	02 9793 8400	2004
S.R.W. Hungry Holdings Pty Ltd ABN 81 095 367 169 (t/as Hungry Jack's (Miranda Fair))	Shop 1065 Westfield Miranda 600 The Kingsway Miranda NSW 2228	02 9531 4441	2006
Simjosh Pty Ltd ABN 64 064 065 372 (t/as Hungry Jack's (St Peters))	400 Princes Highway St. Peters NSW 2044	02 9557 4833	2001
Huon Investments Pty Ltd ABN 27 107 445 134 (t/as Hungry Jack's (Wagga Wagga)) (t/as Hungry Jack's (Albury)) (t/as Hungry Jack's (Lavington))	Lot 3 Hammond Avenue Wagga Wagga NSW 2650	02 6921 7944	2004
	464 Hume Highway Albury NSW 2640	02 6041 4400	2004
	375 Wagga Road Lavington NSW 2641	02 6025 6666	2004
Dunn Burger Pty Ltd ABN 69 085 370 841 (t/as Hungry Jack's (Beresfield))	Lot 201 John Renshaw Drive Cnr Kinta Drive Beresfield NSW 2322	02 4964 4501	1999
Bertha Two Pty Ltd ABN 53 096 819 331 (t/as Hungry Jack's (Bondi))	152-162 Campbell Parade Bondi Beach NSW 2026	02 9130 8787	2002
Carrie's Investments Pty Ltd ABN 13 110 217 242 (t/as Hungry Jack's (Broken Hill))	445 Argent Street Broken Hill NSW 2880	08 8087 8388	2004
Epicure Holding Pty Ltd ABN 99 091 558 619 (t/as Hungry Jack's (South Tweed))	116 Minjungbal Drive South Tweed Heads NSW 2486	07 5524 6777	2001
Marriott Airport Concessions Pty Ltd ABN 59 054 578 273 (t/as Hungry Jack's New Castle Airport)	55 Slades Road Williamstown NSW 2300	02 4965 0011	

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Pabala Pty Ltd ABN 36 119 591 (t/as Hungry Jack's (Kotara))	Home Improvement Centre Northcott Street Kotara NSW 2641	02 4952 1203	2006
(t/as Hungry Jack's (Glendale))	Site 8, Stocklands Supercentre 389 Lake Road Glendale NSW 2285	02 4954 2964	2006
(t/as Hungry Jack's (Belmont))	397 Pacific Highway Belmont NSW 2280	02 4947 7798	2006
Twaits & Monteith Investments Pty Ltd ACN 121 405 669 (t/as Hungry Jack's (Dubbo))	Corner Victoria Street & Newell Highway Dubbo NSW 2830	02 6884 3388	2006
(t/as Hungry Jack's (Orange))	10 – 20 Bathurst Road Orange NSW 2800	02 6361 3333	2006
Blake Family Holdings Pty Ltd (as trustee for the Blake Family Trust) ABN 40 119 119 792 (t/as Hungry Jack's (Marulan North))	BP Service Centre, Hume Highway Marulan NSW 2579	02 4841 1924	2006
(t/as Hungry Jack's (Marulan South))	BP Service Centre Hume Highway Marulan NSW 2579	02 4841 1933	2007
Casbriitt Pty Ltd ABN 93 477 132 601 (t/as Hungry Jack's (Gundagai))	Shell Roadhouse 99 Mount Street South Gundagai NSW 2722	02 6944 3422	2007

Queensland

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Capesun Pty Ltd (as trustee for The HJ No 1 Trust) ACN 069 825 065 (t/as Hungry Jack's (Garden City))	Shop 1032 Garden City Shopping Centre Upper Mt Gravatt QLD 4122	07 3219 4888	1996

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Tiger Enterprises No. 1 Pty Ltd ACN 115 288 161 (t/as Hungry Jack's (Nerang))	Lot 24, Pappas Way Nerang QLD 4211	07 5596 4844	2005
Tiger Enterprises No. 2 Pty Ltd ACN 116 122 911 (t/as Hungry Jack's (Australia Fair))	Shop 120 Australia Fair Shopping Centre Cnr Nerang & Scarborough Streets Southport QLD 4215	07 5571 2277	2005
(t/as Hungry Jack's (Pacific Fair))	Shop 149 Pacific Fair Shopping Centre Hooker Blvd & Nerang Rd Broadbeach QLD 4218	07 5539 0366	1997
Host Services Pty Ltd ABN 57 072 986 399 (t/as Hungry Jack's (Airport Cairns))	Tropics Food Court Domestic Terminal Airport Cairns Qld 4870	07 4035 9496	1996
Airport Retail Enterprises Pty Ltd ABN 16 008 749 031 (t/as Hungry Jack's (Brisbane Airport))	Shop 40, Brisbane Domestic Terminal 1 Alpinia Drive Eagle Farm Qld 4009		2007
Glasslake Pty Ltd ABN 64 010 302 388 (t/as Hungry Jack's (Gympie))	Cnr Rose and River Streets Gympie Qld 4570	07 5482 5933	2007

South Australia

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Noirama Pty Ltd ABN 99 080 802 106 (t/as Hungry Jack's (Marion))	Shop 2026 Westfield Shopping Centre Cnr Diagonal & Sturt Roads Marion SA 5043	08 8296 7603	1997
Hungry Jack's Hawthorn Pty Ltd ABN 78 128 424 859 (t/as Hungry Jack's (Hawthorn))	238 Belair Road Hawthorn SA 5062	08 8271 9828	2007

Name of franchisee	Business address	Business telephone number	Year of commencement of operation
Delaware North Retail Services Pty Ltd ABN 99 001 341 073 (t/as Hungry Jack's (Adelaide Airport))	Level2 Terminal 1 Adelaide Airport Adelaide SA 5950	08 8234 4083	2007

